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Gross School Bus Service, Inc. and International Brotherhood of Teamsters, Local 384.
Case 4-CA-37768

January 21, 2011

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER
AND PEARCE

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on October 26, 2010, the Acting General Counsel issued the complaint on November 12, 2010, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 4-RC-21631. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On November 30, 2010, the Acting General Counsel filed a Motion for Summary Judgment and a memorandum in support. On December 3, 2010, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a reply.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the certification on the basis of its objections to conduct alleged to have affected the results of the election in the representation case.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Pennsylvania corporation with a facility at 1801 Pottstown Pike, Pottstown, Pennsylvania (the facility), and headquarters in Bechtelsville, Pennsylvania, has been engaged in providing student transportation services. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, received gross revenues in excess of \$250,000, and purchased and received at the facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania.¹

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, International Brotherhood of Teamsters, Local 384, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election held on January 22, 2010, the Union was certified on September 14, 2010, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time bus drivers and bus aides employed by Respondent at its 1801 Pottstown Pike, Pottstown, Pennsylvania facility but excluding all other employees, dispatchers, managerial employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

About September 27, 2010, the Union, by letter, requested the Respondent to recognize and bargain with it as the exclusive collective-bargaining representative of the unit. About October 21, 2010, the Respondent, by letter, advised the Union that it would not recognize and bargain with the Union as the exclusive collective-

¹ The Respondent denies par. 2(b) of the complaint, which alleges that the Respondent meets the above-stated jurisdictional standards. However, the Respondent admits the allegations in complaint par. 2(c) that it has been an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act. Further, in the underlying representation proceeding, the Respondent stipulated that it meets the above-stated jurisdictional standards and that it is an employer engaged in commerce under the Act. Accordingly, we find that the Respondent's denial of the factual basis for asserting jurisdiction under the Act does not raise any issues warranting a hearing.

bargaining representative of the unit. We find that this failure and refusal constitutes an unlawful failure and refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since October 21, 2010, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER²

The National Labor Relations Board orders that the Respondent, Gross School Bus Service, Inc., Pottstown and Bechtelsville, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Brotherhood of Teamsters, Local 384 as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of

employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time bus drivers and bus aides employed by Respondent at its 1801 Pottstown Pike, Pottstown, Pennsylvania facility but excluding all other employees, dispatchers, managerial employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facilities in Pottstown and Bechtelsville, Pennsylvania, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 21, 2010.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 21, 2011

Wilma B. Liebman, Chairman

Craig Becker, Member

Mark Gaston Pearce, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

² Consistent with our recently issued decision in *J. Picini Flooring*, 356 NLRB No. 9 (2010), we have ordered the Respondent to distribute the notice electronically if it is customarily communicating with employees by such means.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with International Brotherhood of Teamsters, Local 384 as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All full-time and regular part-time bus drivers and bus aides employed by us at our 1801 Pottstown Pike, Pottstown, Pennsylvania facility but excluding all other employees, dispatchers, managerial employees, guards and supervisors as defined in the Act.

GROSS SCHOOL BUS SERVICE, INC.